

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC.,
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION,

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:

ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d), counsel for Defendants Juul Labs, Inc. (“JLI”), Altria,¹ Director Defendants,² E-Liquid Defendants,³ Retailer Defendants,⁴ and Distributor Defendants⁵ (collectively “Defendants”), and Plaintiffs’ Co-Lead Counsel (“Plaintiffs”) (collectively referred to herein as the “Parties”) respectfully provide this Joint Case Management Statement in advance of the Further Case Management Conference scheduled for February 17,

¹ “Altria” refers to Altria Group, Inc., and the Altria-affiliated entities named in Plaintiffs’ Consolidated Class Action Complaint and Consolidated Master Complaint (collectively, “Complaints”), see ECF Nos. 387, 388.

² “Director Defendants” refers to Messrs. James Monsees, Adam Bowen, Nicholas Pritzker, Hoyoung Huh, and Riaz Valani.

³ “E-Liquid Defendants” refers to Mother Murphy’s Labs, Inc., Alternative Ingredients, Inc., Tobacco Technology, Inc., and Eliquitech, Inc.

⁴ “Retailer Defendants” refers to Chevron Corporation, Circle K Stores, Inc., Speedway LLC, 7-Eleven, Inc., Walmart, and Walgreen Co.

⁵ “Distributor Defendants” refers to McLane Company, Inc., Eby-Brown Company, LLC, and Core-Mark Holding Company, Inc.

2023.

I. PARTICIPANT INFORMATION

The February 17, 2023 CMC will proceed by Zoom. Anyone who wishes to attend the conference virtually may log in using the information available at:

<https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

II. ISSUES TO BE DISCUSSED AND PROPOSED AGENDA

1. Status of Case Filings and Dismissals

2. Case Management Matters

3. ADR Status

III. STATUS OF CASE FILINGS AND DISMISSALS

As of February 15, 2023, approximately 5,762⁶ cases are pending in this MDL, naming 120 defendants. A list of these defendants is attached as **Exhibit A**. To date, 4,270 personal injury cases and 1,434 government entity cases (including 1,348 school districts, 43 counties, 8 cities, and 36 tribes) have been filed in this MDL. 822 MDL plaintiffs have voluntarily dismissed their cases (813 personal injury plaintiffs, 27 class plaintiffs, and 2 school districts); 76 cases have been dismissed without prejudice pursuant to CMO No. 8; and 19 other cases are subject to pending motions to dismiss without prejudice that have not yet been ruled upon. Furthermore, 233 case dismissals without prejudice have been converted to dismissals with prejudice pursuant to CMO No. 8.

There are 775 complaints pending in JCCP 5052, which is assigned to Judge David S. Cunningham of the Los Angeles Superior Court as the Coordination Trial Judge. There are 84 government entity cases, including 79 school districts, and 691 personal injury cases brought on behalf of over 5,072 individual personal injury plaintiffs. There are 26 defendants named in those JCCP cases.

The Parties are also aware of 11 pending cases filed by State Attorneys General specifically: California, Illinois, Hawai'i, New York, Pennsylvania, Minnesota, Washington D.C.,

⁶ The numbers in this Statement reflect the Parties' good faith estimates based on reasonably available information. The Parties will continue to work together to align their data and resolve any inconsistencies.

1 New Mexico, Massachusetts, Colorado, and Alaska.⁷ In addition, the State Attorney General of
 2 North Carolina filed a case against Director Defendants, which was dismissed with prejudice for
 3 lack of personal jurisdiction. Plaintiffs' Liaison Counsel continue their outreach to various State
 4 Attorneys General to discuss cooperation with this MDL.

5 An update on matters of significance (including hearings, schedules, deadlines,
 6 depositions, substantive orders, and trial dates) in Related Actions as defined by the Joint
 7 Coordination Order (CMO 9, ECF No. 572 at 1, 3), is attached as **Exhibit B**.

8 **IV. CASE MANAGEMENT MATTERS**

9 **1. SFUSD Trial**

10 **Live Witnesses.**

11 Plaintiff's Position. Altria employees Jennifer Hunter and Jason Flora were listed on
 12 Altria's January 13, 2023 witness list as "Live/Deposition." As the Court is aware, none of
 13 Altria's employees reside within the Court's subpoena power. Plaintiff has requested that Altria
 14 make Hunter and Flora available via Rule 43, but Altria has declined—creating a situation in
 15 which only Altria has the option to call these witnesses live. Plaintiff requests that if Altria elects
 16 to make Hunter and Flora available to testify live in its own case, the Court require these
 17 witnesses to be available to testify live in SFUSD's case-in-chief, should Plaintiff decide to call
 18 them. Alternatively, Plaintiff seeks the opportunity to cross-examine Hunter and/or Flora during
 19 Altria's case beyond the scope of direct in order to ensure a level playing field. Altria unfairly
 20 claims these "are solely witnesses for Altria" because Plaintiff chose not to designate them as
 21 witnesses by deposition—the only method available to Plaintiff under the circumstances.
 22 Ultimately, Altria should either make these witnesses available live during this trial or use their
 23 video—they cannot have their cake and eat it too.

24 Defendants' Position: Plaintiff's supposed desire to call Jennifer Hunter and Jason Flora is
 25 belied by the fact that they have not identified either individual as a witness in any of the
 26 numerous recent witness lists exchanged in this matter, even though their current witness list still
 27

28 ⁷ Hawai'i and Pennsylvania are parties to a multistate settlement agreement with JLI.

1 lists 44 individuals. In contrast, Altria has consistently listed Ms. Hunter and Mr. Flora as
2 “Live/Deposition” witnesses in each of its witness lists.

3 As a result, these individuals are solely witnesses for Altria. Nothing in the Federal Rules
4 permits Plaintiff to call a defense witness in Plaintiff’s case-in-chief. If, following the close of
5 Plaintiff’s case, Altria chooses to call Ms. Hunter or Mr. Flora, then Plaintiff will have an
6 opportunity to cross-examine them within the scope of their directs. The circumstances here
7 provide no basis for allowing Plaintiff to bypass the admonition in the Federal Rules of evidence
8 that “[c]ross-examination should not go beyond the subject matter of the direct examination”
9 F.R.E. 611(b).

10 **2. Breathe DC’s Motion**

11 Breathe DC filed a motion seeking remand or transfer. JLI filed an opposition on
12 February 3, and Breathe DC’s reply was filed on February 10. *See* Case No. 3:20-cv-03717, ECF
13 Nos. 27, 29, 30. The parties will be prepared to address this motion at the CMC.⁸

14 **V. ADR STATUS**

15 As announced at the December 6, 2022 Case Management Conference, Plaintiffs, JLI, and
16 the Director Defendants have reached an agreement that will create settlement programs to
17 resolve the personal injury, class, tribal, and government entity cases as to those entities and
18 individuals. *See* ECF No. 3690. On December 14, 2022, JLI filed Notice Regarding Proposed
19 Order Re Implementing Settlement, attaching proposed Case Management Order No. 16. ECF
20 No. 3706. Case Management Order No. 16 was entered by the Court on December 16, 2022.
21 ECF No. 3714. On December 19, 2022, Plaintiffs moved for preliminary approval of the class
22 action settlement. ECF No. 3724. On January 30, 2023, the Court entered an Order granting
23 Plaintiffs’ motion for preliminary approval of the class action settlement. ECF No. 3779. Also
24 on January 30, 2023, the Court entered Case Management Order No. 17 regarding ongoing
25 litigation against settling defendants. ECF No. 3780.

26 The above-referenced settlement does not include Altria. Plaintiffs and the Altria

27 ⁸ Counsel for class plaintiffs, having further reviewed the *Breathe DC* claims and the motion to
28 lift the stay of those claims, take no position on the motion to lift the stay on the *Breathe DC*
action.

Defendants will continue to confer with Settlement Master Thomas J. Perrelli and cooperate with his recommendations.

Dated: February 15, 2023

Respectfully submitted,

By: /s/ Renee D. Smith

By: /s/ Sarah R. London

David M. Bernick (*pro hac vice*)
Renee D. Smith (*pro hac vice*)
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654
Telephone: (312) 862-2310

Sarah R. London
LIEFF CABRASER HEIMANN & BERNSTEIN
275 Battery Street, Fl. 29
San Francisco, CA 94111
Telephone: (415) 956-1000

By: /s/ Peter A. Farrell

By: /s/ Dena C. Sharp

Peter A. Farrell (*pro hac vice*)
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave, N.W.
Washington, D.C. 20004
Telephone: (202) 389-5959

Dena C. Sharp
GIRARD SHARP LLP
601 California St., Suite 1400
San Francisco, CA 94108
Telephone: (415) 981-4800

By: /s/ Gregory P. Stone

By: /s/ Dean Kawamoto

Gregory P Stone, SBN 78329
Bethany W. Kristovich, SBN 241891
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100

Dean Kawamoto
KELLER ROHRBACK L.L.P.
1201 Third Ave., Ste. 3200
Seattle, WA 98101
Telephone: (206) 623-1900

Attorneys for Defendant Juul Labs, Inc.

Ellen Relkin
WEITZ & LUXENBERG
700 Broadway
New York, NY 10003
Telephone: (212) 558-5500

By: /s/ Beth A. Wilkinson

Co-Lead Counsel for Plaintiffs

Beth A. Wilkinson (*pro hac vice*)
Brian L. Stekloff (*pro hac vice*)
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
bwilkinson@wilkinsonstekloff.com
bstekloff@wilkinsonstekloff.com

*Attorneys for Defendants Altria Group, Inc.,
Philip Morris USA Inc., Altria Client Services
LLC, Altria Distribution Company, and Altria
Enterprises LLC*

1 By: /s/ John C. Massaro

2 John C. Massaro (admitted pro hac vice)
3 Daphne O'Connor (admitted pro hac vice)
4 Jason A. Ross (admitted pro hac vice)
5 David E. Kouba (admitted pro hac vice)
6 **ARNOLD & PORTER KAYE SCHOLER**
7 **LLP**

8 601 Massachusetts Ave, NW
9 Washington, DC 20001
10 Telephone: 202-942-5000
11 Facsimile: 202-942-5999
12 John.Massaro@arnoldporter.com
13 Daphne.OConnor@arnoldporter.com
14 Jason.Ross@arnoldporter.com
15 David.Kouba@arnoldporter.com

16 *Attorneys for Defendants Altria Group, Inc.,*
17 *Philip Morris USA Inc., Altria Client Services*
18 *LLC, and Altria Distribution Company*

19 By: /s/ Eugene Illovsky

20 **BOERSCH & ILLOVSKY LLP**

21 Eugene Illovsky
22 Martha Boersch
23 Matthew Dirkes
24 1611 Telegraph Ave., Suite 806
25 Oakland, CA 94612
26 Telephone: (415) 500-6643
27 eugene@boersch-illovsky.com
28 martha@boersch-illovsky.com
matt@boersch-illovsky.com

Attorneys for Defendant Adam Bowen

By: /s/ Michael J. Guzman

**KELLOGG, HANSEN, TODD, FIGEL &
FREDERICK, P.L.L.C.**

Mark C. Hansen
Michael J. Guzman
David L. Schwartz
Sumner Square, 1615 M St., N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7910
mguzman@kellogghansen.com

*Attorneys for Defendants Nicholas Pritzker,
Riaz Valani, and Hoyoung Huh*

By: /s/ James Kramer

**ORRICK HERRINGTON & SUTCLIFFE
LLP**

James Kramer
The Orrick Building
405 Howard Street
San Francisco, CA 94105-2669
Telephone: (415) 773-5700
jkramer@orrick.com

and

Lauren Seaton
Main St Ste 1100
Irvine, CA 92614
Telephone: (949) 567-6700
lseaton@orrick.com

Attorneys for Defendant James Monsees